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Status Report As Required by Code Subsection 23.6(12)

January 15, 2015

Iowa Code chapter 23, enacted in 2012 and amended in 2013 to establish the Iowa Public Information Board (IPIB), requires the board to “prepare and transmit to the governor and to the general assembly, at least annually, reports describing complaints received, board proceedings, investigations, hearings conducted, decisions rendered, and other work performed by the board.” This report reviews the work performed by the board in 2014 in accordance with the directives of Chapter 23.

The board was created to provide a free, efficient way for Iowans to receive information and resolve complaints related to chapters 21 and 22, Iowa’s open meetings and public records laws. The agency’s case load has far exceeded expectations since its inception, with the board successfully resolving 92 formal complaints and answering 788 informal inquiries in 2014. The vast majority of complaints have been settled informally, with the board attorneys negotiating a compromise that satisfies both parties, reduces community conflict and results in increased government transparency. In addition, board staff members have traveled the state, conducting 38 training sessions for hundreds of state, county and city officials. The board has identified continuing problems in the areas of meeting notice, governmental subcommittees and law enforcement records, and has recommended legislative changes to address them.

In particular, the number of informal inquiries, from around the state, establishes the value of the services of the IPIB. Many complaints are handled within 24 hours and without the need for formal IPIB action. Examples include:

- A city administrator requesting assistance in determining how to respond to a request for records that Iowa state law required to be kept confidential. IPIB staff was able to coordinate a conversation between the administrator and the state official to determine what information could be released.
- A citizen expressing concern that two members of a three member Board of Supervisors could be violating open meetings laws when discussing government business by telephone or email. IPIB staff cautioned the particular Board about the risk of violating Chapter 21, and then issued a general concern to other groups about the issue.
- A mother of a crime victim wanted copies of certain police investigations of other local victims of similar crimes. While the reports themselves and the names of the other victims were confidential, IPIB staff coordinated communications and meetings between the mother and law enforcement so that her questions could be answered without invading the privacy of others.
- An editor from an Iowa newspaper reported concerns that a county group was not following the open meetings laws. IPIB staff contacted the county attorney. Working together all agreed that the group was actually an advisory committee and subject to open meetings law.

Board Members

Robert Andeweg • Anthony Gaughan • Jo Martin • Andrew McKean • Gary Mohr • William Monroe
• Kathleen Richardson • Suzan Stewart • Peggy Weitl

- An anonymous caller expressed concerns about a local conference board caucusing in small groups during an open meeting. IPIB staff researched the issue, discussed it with other state agencies, and developed a response that was then incorporated into an IPIB monthly column.
- An Iowa state senator contacted IPIB with concerns over records retention policies. Although the Iowa code does not have a universal record retention policy outlined in chapter 22, the IPIB staff researched the issue for the senator and participated in a subsequent interim study committee hearing concerning potential legislation.

The board

Governor Branstad appointed the board in July, 2012. Since then the board has met on a monthly basis performing a number of organizational activities necessary prior to being authorized to become operational July 1, 2013.

The board achieved operational status on July 8, 2013, with the opening of an office on the third floor of the Wallace Building in the Capitol Complex.

Chapter 23 states no more than three members of the nine-member board shall represent the media, and not more than three shall represent cities, counties or other local governments. The members serve staggered four-year terms, and the board must be balanced by political party and gender. The board appoints a chair from among its members. The board is an independent agency. The nine members are:

---**Robert Andeweg, JD**, Urbandale (Republican) (chair) - Robert is an attorney with the Nyemaster Goode Law Firm in Des Moines. He has served on the Urbandale City Council and currently serves as that city's Mayor.

---**Tony Gaughan, JD**, West Des Moines (Republican) - Tony is an attorney who is an Associate Professor of Law at Drake University in Des Moines.

---**Jo Martin**, Spirit Lake (Democrat) - Jo is a retired vice president of Times-Citizen Communications in Iowa Falls, having worked for several other Iowa newspapers prior to that. She is a Past President of the Iowa Newspaper Association (INA) and the Iowa Newspaper Foundation (INF).

---**Andy McKean, JD**, Anamosa (Republican) - Andy is an attorney who has served as a City Attorney (Morley, Martelle, and Mechanicsville), a County Supervisor (Jones County 2003-2011) and a State Legislator (State Representative 1979-1993 and State Senator 1993-2003).

---**Gary Mohr**, Bettendorf (Independent) - Gary is Executive Director, External Affairs for Eastern Iowa Community College in Davenport. He was elected to the Bettendorf City Council in November, 2013.

---**Bill Monroe**, Johnston (Republican) - Bill retired after 29 years as Executive Director of the Iowa Newspaper Association in 2009. Prior to that, he worked at several Iowa newspapers as an editor or publisher. In 2011, Governor Branstad named him to serve (in a volunteer capacity) as the Governor's Transparency Advisor. He has served on the Executive Committee of the Iowa Freedom of Information Council

---**Kathleen Richardson, JD**, Des Moines (Democrat) - Kathleen is Dean and Professor at the Drake University School of Journalism and Mass Communication in Des Moines and has served as Executive Director of the Iowa Freedom of Information Council (IFOIC) since 2000. She has also served as central coordinator for the Expanded News Media Coverage (electronic coverage of the judiciary) program for the Supreme Court.

---**Suzan Stewart, JD**, Sioux City (Republican) - Suzan is Senior Managing Attorney with MidAmerican Energy Company.

---**Peggy Weitzl**, Carroll (Democrat) - Peggy retired as the Treasurer of Carroll County on December 31, 2013.

Board Staff

---**W Charles Smithson, JD**, was selected as Executive Director on October 30, 2014, upon the retirement of Keith Luchtel. Charlie received his bachelor's degree in history/political science/sociology from Westmar College and his law degree from Washburn University. He served as Legal Counsel and then also as Executive Director between 1998 to 2010 to the Iowa Ethics and Campaign Disclosure Board. Most recently he served as Legal Counsel and Legislative Liaison in the Iowa Secretary of State's Office. He was Chief Clerk of the Iowa House of Representatives from November of 2010 to November of 2012 and is also an adjunct professor of election law at Drake University Law School.

---**Margaret E. Johnson, JD**, serves as deputy director of the board. She received a bachelor's degree in Journalism from Iowa State University and a law degree from Marshall/Wythe Law School at the College of William and Mary. Her prior legal experience includes serving as a captain with the Army JAGC; assistant district attorney in the 4th Judicial District, Colorado; assistant county attorney for Teller County, Colorado; private practice; the El Paso County GAL office; contract prosecutor for the Iowa Attorney Disciplinary Board and Fremont County, Iowa, county attorney. Her judicial experience is as a substitute juvenile magistrate in Colorado. She joined the staff on July 22, 2013.

---**Cindy Meyerdirk** serves as Administrative Assistant to the board. She moved from NW Iowa, where she held business staff positions, to Des Moines in 2007. Cindy then began government employment with the Iowa Fire Marshal Division of the Department of Public Safety. She served as Assistant to the Building Code Director and served as the Assistant to the Fire Marshal when hired by the IPIB commencing July 5, 2013.

The board's vision

At its first meeting on July 19, 2012, the board outlined its vision for the agency it was setting out to define. The minutes of that meeting state the board said its operation should

- be inexpensive
- be convenient
- provide a one-stop service
- provide uniformity of information and
- provide consistency of information.

Transparency

It is the goal of the board to be the state's most transparent state agency.

The IPIB routinely sends notice out earlier than the required 24 hours prior to all meetings and to many more people than only those from the media. To date, over 200 people, media and agencies are being sent meeting notices.

In addition to distributing required tentative agendas the board also sends agenda materials and prior meeting minutes when notifying requestors about meetings. The board also posts its agendas on the board's website.

IPIB minutes are posted on the board's website and sent to all who have requested meeting notice.

IPIB Year in Review

As of December 31, 2014, staff has processed 811 cases. Not all are complaints as indicated below. Case inquiries arrive via the website, mail, phone, email and office visits. The Case Management System (CMS) developed by staff assigns a number and case type to each, as well as statistical information and case notes. We anticipated an annual case rate of 300 to 350. The 811 cases opened in 2014 include:

Formal Complaints (102) – these cases require investigation and are processed for Board review as outlined in the Rules. Complainants have included citizens, media, and elected officials. Selected complaints are posted on the IPIB website (www.ipib.iowa.gov) under “Rulings.”

Formal Opinions (7) – these cases require research and investigation and are processed for Board review as outlined in the Rules. Requests have been made by agencies, media and private citizens. The finalized opinions are published to the IPIB website under “Rulings.”

Declaratory Orders and Rule Making (4) – these requests involve research, investigation and coordination with governmental bodies and other organizations as outlined by the IPIB administrative rules prior to presentation to the Board. None of the requests made during 2014 were within the jurisdictional authority of the IPIB.

Informal Complaints (123) – these informal cases also require investigation, research and mediation. Informal complaints are resolved without the filing of a formal complaint to the Board. The majority of these complaints in 2014 were from citizens requesting assistance in obtaining records or accessing meetings.

Informal Requests (565) – these informal cases require review and research. Informal Requests can normally be resolved within 24 hours. They do not require Board review and action under the Rules. Usually the requestor is a public official, staff, or legal counsel seeking assistance in the interpretation of Chapters 21 and 22. In 2014, the requestor breakdown was citizen 50%, media 17% and government official or staff 33%.

Miscellaneous Other (10) – this category includes other requests for assistance that do not fall within the above categories, such as training, legislative issues, etc.

Decisions Rendered

Of the 102 formal complaints filed in 2014, ten remained open at year’s end, primarily filed in December. Twelve complaints progressed through informal resolution as envisioned by Iowa Code section 23.9, resulting in remedial plans that were negotiated by IPIB staff. The remedial plans approved during 2014 were either successfully completed by year’s end or will soon be completed.

Several cases have been dismissed as having not been timely filed - outside the board’s sixty-day period of limitation. Also, some requests seek assistance on problems that are not within the board’s jurisdiction. Frequently staff has been able to be of assistance on an informal basis to help citizens obtain a satisfactory result with the cooperation of public official in other agencies.

Investigations

No formal field investigations have occurred this year. Some meetings and research trips on the formal complaints have occurred out of the IPIB office. The investigatory phase of most cases occurs in the process of

conciliation, the preferred method of dispute resolution. Good cooperation among parties has been the rule, not the exception. The occasional exception has been overcome with patient persistence, and the cooperation of local government organizations and the attorneys who represent involved local governments.

Hearings Conducted

One formal hearing was concluded in 2014, concerning Larry Brock, Washington County Attorney. Mr. Brock was found to have violated Iowa Code chapter 22 (public records) during a contested hearing before an Administrative Law Judge. The proposed decision was approved by the IPIB and not appealed by Mr. Brock. In addition to a violation of Chapter 22, statutory damages of \$1000 were imposed and paid.

At year's end, another formal hearing was pending concerning a public records (chapter 22) request to the Des Moines Public School District. The IPIB Board approved the filing of formal charges on October 16, 2014.

District Court Review

The complaint concerning the Des Moines Register and the Department of Human Services, involving the release of certain videotape records from the Iowa Juvenile Home in Toledo, was dismissed by the IPIB on February 27, 2014. Following that dismissal, the Des Moines Register filed a Petition for Judicial Review on March 28, 2014. The IPIB was represented by outside counsel, Mark McCormick. The District Court affirmed the IPIB decision and dismissed the Petition for Judicial Review on November 25, 2014.

Board proceedings

All IPIB meeting minutes for the past year are available on the website (www.ipib.iowa.gov).

Board Outreach and Training

Board members and staff represented the board at the events listed below. In most cases presentations were made concerning the operation of the board, its goals and its powers and duties. The board has made it known to civic, law enforcement, local government, media and professional organizations that it welcomes the opportunity to provide speakers and training opportunities. All presentations emphasize the statutory goal, embraced by the board, of using a conciliatory approach to solving transparency issues. Building a reputation as a resource to be used free of charge by local government officials and custodians of public records is a key board goal.

---Appearances have been made before the following entities in 2014:

Iowa Municipal Utilities Association, Des Moines, February 6
Iowa Newspaper Association Convention, Des Moines, February 7
School Board Association, Des Moines, February 12
IHA Public Hosp. Trustees, West Des Moines, March 8
Sac County League of Cities, Lytton, March 12
West Central Iowa Clerks Association, Denison, March 13
ISBA Government Practice Section CLE, Des Moines, March 28
Iowa Hospital Association, Des Moines, April 10
North Central Library Symposium, Mason City, April 25
Administrative Law Judges CLE Seminar, Des Moines, May 5
Great Plains Government Finance Officers Assoc., Omaha, May 14
N.W. Iowa City Clerk's Association Meeting, Spencer, May 21
Osceola County Citizens and Officials, Sibley, June 9

Iowa County Attorney Association, Okoboji, June 10
DNR Legal Staff Presentation, Des Moines, July 2
Perry Rotary Club, Perry, July 2
Iowa Library Services Webinar, Des Moines, July 8
School Board Attorneys Association, Urbandale, July 14
Municipal Professionals Institute, Ames, July 22
Iowa Professionals Academy, Ames, July 24
Des Moines Lions Club, Des Moines, July 24
Iowa County Auditors Convention, Davenport, July 31
Washington County, Ainsworth, August 12
Wapello County Training, Ottumwa, September 11
Iowa League of Cities Annual Conference, Council Bluffs, September 25
Cedar County Officials and Public, Tipton (2 presentations), September 30
Des Moines Register Forum, Des Moines, October 2
Iowa Municipal Finance Officers Association, Des Moines, October 16
Story County Officials and Public, Nevada (3 presentations), October 24
A Day for Directors Workshop, Des Moines, November 5
Local Government Public Records Study Committee, State Capitol, November 6
IASB Attorneys' Conference, Clive, November 7
Southwest Iowa Regional Training, Atlantic, November 10
Iowa Municipal Attorneys Association, Urbandale, November 21
Iowa County Extension Annual webinar training, Ames, December 6

Resources and activities

The IPIB met every month in open meetings to review cases and conduct other required business. Board committees have been formed to focus on several tasks including:

- Developing and implementing a communications plan;
- Developing and implementing a legislative recommendations process; and
- Developing and implementing a training program in cooperation with government and media organizations.

Committees met as needed throughout the year in open meetings.

Board tasks completed in 2014 include:

---**Website.** The IPIB website, www.ipib.iowa.gov, opened in late August 2013. The website includes the full text of Chapters 21, 22, and 23. It also includes questions and answers (FAQs) about various issues, copies of selected formal complaint decisions of likely interest, all minutes and agendas for the IPIB, activities of the IPIB and contact information. The website also has links to file a formal complaint or to ask a question. Statistics from the web host for January through December 2014 note **** visitors viewing **** pages on the website. Each month around 60% of the visitors to the website are new, first-time visitors.

During 2014, the Training Committee met with other agencies to draft, refine and publish a training PowerPoint presentation to the website: "Iowa Sunshine Law – Open Meetings and Open Records in Iowa." The free training program is available to any group, agency, governmental body or individual wanting basic, comprehensive training on Chapters 21 and 22.

---Developing a training program. For the past decade or so, the Iowa League of Cities, the Iowa State Association of Counties, the Iowa Association of School Boards, the Iowa Newspaper Foundation, the Iowa Broadcasters Association and the Iowa Freedom of Information Council have worked together to present training opportunities for their constituents and the general public. Development of the website training program (above) was an integral part of developing an universal training curriculum.

---Information policies and processes established. An email distribution list is available to anyone who wants to receive copies of all general notice items such as meeting notices, agendas and minutes. Other general interest items are also circulated on this list. The policies and processes reflect the board's transparency goal stated above. The executive director is responsible for securing information in the custody of the board that is required to be kept confidential. A media distribution list was developed in 2014 to assist with disseminating information of particular interest to the media.

---Establishing board goals and metrics to measure progress. The board has established a case management system that continues to be refined and adjusted as experience warrants. The new, refined system allows for statistical reporting on audience served (citizen, media, government), location by city and county, the length of time a case is open, whether a case meets the jurisdictional requirements of Chapter 23, types of cases (complaint, opinion, ruling) and whether the complaint is focused on state, city, county, school or other governmental bodies. The new system also allows staff to enter notes, comments and upload emails and other documents to the case record.

---Legislative agenda. During 2014, the Legislative Committee met frequently to research and review the Iowa Code chapters 21 and 22. Early in the year, six interest areas were identified: custodial discretion for release of a record, refining the definition of an 'advisory group', fee structure for records, abusive use of record requests, defining '24-hour notice,' and police records requests. After extensive review and research, the committee narrowed the issues to 3:

- Clarification of application of open meetings law to advisory groups and task forces.
- Meeting notice and posting requirements.
- Police officer's investigative report exemption, subsection 22.7(5).

Following review and preliminary IPIB approval of the legislative agenda, the committee held public hearings and received public comment throughout the summer of 2014. A finalized Study Bill was presented to the IPIB and modified and approved on September 18, 2014.

REVIEWED AND APPROVED BY THE IOWA PUBLIC INFORMATION BOARD ON JANUARY 15, 2015.

Robert Andeweg, Chair